FILED
Court of Appeals
Division II
State of Washington
7/29/2022 11:09 AM

NO. 56443-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

SHAUN AARON SCHLENKER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PACIFIC COUNTY

The Honorable James W. Lawler, Judge

BRIEF OF APPELLANT

KEVIN A. MARCH
Attorney for Appellant

NIELSEN KOCH & GRANNIS, PLLC
The Denny Building
2200 Sixth Avenue, Suite 1250
Seattle, WA 98121
(206) 623-2373

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (CONT'D)

Page

TABLE OF CONTENTS (CONT'D)

Page

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES (CONT'D)

Page

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

TABLE OF AUTHORITIES (CONT'D)

Page

RULES, STATUTES, AND OTHER AUTHORITIES

A. ASSIGNMENTS OF ERROR

1a. The trial court denied Shaun Aaron Schlenker his Sixth Amendment and article I, section 22 rights to present a defense when it refused to provide a voluntary intoxication instruction at his request.

1b. Defense counsel rendered ineffective assistance of counsel in violation of Mr. Schlenker's Sixth Amendment and article I, section 22 rights, by requesting a voluntary intoxication instruction only with respect to the malicious mischief counts rather than all five counts, including felony harassment and resisting arrest.

2. There was insufficient evidence of malicious mischief in the second degree charged in Count II.

3. The amended information charging Count II, malicious mischief in the second degree, was constitutionally deficient because it failed to plead an essential element of the crime.

4. The trial court erred in imposing $9,733.88 in restitution for damage to the Long Beach Police Department building, where Mr. Schlenker was never charged with a crime pertaining to damaging the Long Beach Police Department's building.

5. The trial court erred in imposing $1,190.96 in restitution to Anchor Realty, as no evidence presented at trial or in the state's restitution materials pertained to any loss suffered by Anchor Realty.

6. The trial court erred in imposing community custody supervision fees.

Issues Pertaining to Assignments of Error

1a. The trial evidence established that Mr. Schlenker had consumed alcohol and that he was intoxicated or impaired by this consumption. All the crimes for which Mr. Schlenker stood trial had mental elements. Did the trial court err in denying Mr. Schlenker's request for a voluntary intoxication instruction?

1b. Defense counsel's request for a voluntary intoxication instruction appeared to extend only to three malicious mischief counts and did not include a request for the instruction pertaining felony harassment or resisting arrest. Because these crimes also have mental elements and because the trial evidence showed that alcohol intoxication impacted the mental elements for these other offenses specifically, was defense counsel ineffective for not requesting a voluntary intoxication instruction for the felony harassment and resisting arrest counts?

2. Count II charged malicious mischief in the second degree for causing physical damage to the Long Beach Performing Art Center, The Elks Lodge, *and* Anchor Realty in amount exceeding $750. The jury was instructed accordingly. The jury heard evidence regarding damage amounts for the Performing Arts Center and The Elks Lodge, but the prosecution presented no evidence of any damage amount for Anchor Realty. Based on the law of this case, was there

insufficient evidence presented to prove Count II because no rational trier of fact could determine that damages to the Performing Arts Center, The Elks Lodge, *and* Anchor Realty exceeded $750, such that the second degree malicious mischief charged in Count II must be dismissed with prejudice?

3. When the prosecution wishes to aggregate damage amounts for the purpose of charging malicious mischief in the second degree, it must prove a common scheme or plan as an essential element of the crime. The common scheme or plan element must be pleaded in the state's information. Because the state failed to plead this essential element in the information and because, from a liberal construction of the information, the element cannot be inferred, must the second degree malicious mischief charged in Count II be dismissed without prejudice?

4. The trial court explicitly determined that the Long Beach Police Department was not entitled to restitution for any damage to the police station, as Mr. Schlenker was not charged or convicted of any conduct relating to this damage.

Nevertheless, the restitution order imposed $9,733.88, which, per the state's restitution materials, relates to Long Beach police station repairs. Because the restitution order imposes this amount for conduct Mr. Schlenker was never convicted of and is directly contrary to the trial court's stated intent, must this amount be stricken from the restitution order?

5. The trial court imposed $1,190.96 in restitution for Anchor Realty. No damage amount associated with Anchor Realty was ever presented at trial or in the state's restitution request. Rather, the $1,190.96 relates to damage to the Long Beach Performing Arts Center, not Anchor Realty. Must the restitution order be amended to accurately reflect the restitution Mr. Schlenker owes?

6. The trial court explicitly waived all discretionary legal financial obligations based on indigency and stated its intent to impose only mandatory obligations. Nonetheless, the judgment and sentence imposes discretionary Department of

Corrections community custody supervision fees. Should these fees be stricken from the judgment and sentence?

B. STATEMENT OF THE CASE

1. Factual background and trial evidence

On February 14, 2021 in the early morning hours, Long Beach police were dispatched to address reports of physical damage to various property. RP 161-62, 216-17, 295-96. Officers responded to the residence of Officer Miranda Estrada, who had reported waking up to breaking noises and saw a white male holding something. RP 250-51, 253. The male was wearing a distinct beanie hat, which she associated with Mr. Schlenker based on prior contact. RP 254-55. Off. Estrada reported that the police patrol vehicle parked outside her house had both headlights and its passenger-side mirror smashed. RP 257. Other of Off. Estrada's personal vehicles, including a GMC Denali and Chevrolet Camaro, were also damaged: one of the Denali's headlights was broken and the Camaro's back windshield was smashed in. RP 219-21, 258.

Police and other witnesses testified about damage to Long Beach businesses. According to Deputy Chief Casey Meling, he contacted the owner of the Long Beach Performing Arts Center and Anchor Realty to inform them of broken windows. RP 237-38. William Svendsen, who runs the Performing Arts Center, testified he covered broken windows there with plywood and roughly paid $1,200 to fix damages. RP 331, 338-39. Alaina Casey testified that The Elks Lodge also sustained broken windows. RP 341. Ms. Casey indicated that ordering replacement windows cost almost $8,000. RP 345. Aside from Dep. Chief. Meling's testimony that he contacted Anchor Realty, no other evidence was presented at trial relating to Anchor Realty.

Dep. Chief Meling was the first officer to see Mr. Schlenker, whom he reported was walking and carrying a baseball bat. RP 223-24. He contacted Mr. Schlenker, commanded him to drop the bat, and Mr. Schlenker complied. RP 225. However, Dep. Chief Meling testified Mr. Schlenker did

not comply with commands to get on the ground. RP 227. He said Mr. Schlenker responded by saying, "I don't understand what you're saying, something like that." RP 227.

Off. Anthony Natsiopoulos arrived on scene and Off. Estrada arrived shortly after. RP 166-68. A fourth officer, Off. Flint Wright, also arrived. RP 274. Off. Natsiopoulos, consistent with Dep. Chief Meling's testimony, reported that Mr. Schlenker appeared confused about what Dep. Chief Meling was asking him to do. RP 197. Off. Estrada similarly testified that Mr. Schlenker "sounded belligerent" and that she could not make out most of what he said because "[i]t didn't make sense." RP 271.

Officers reported that a physical struggle with Mr. Schlenker ensued. Off. Natsiopoulos said that when they attempted to lift Mr. Schlenker off the ground, he started fighting and looked like he was attempting to trip the officers. RP 168. He said it took all four responding officers to secure Mr. Schlenker in his police vehicle. RP 169. Dep. Chief Meling said that Mr. Schlenker threw his legs out as far as he could in front of

other officers as they were trying to walk. RP 228. Off. Wright also described Mr. Schlenker struggling as they were trying to place him into the police vehicle, stating he did not want to get into the car. RP 275-76, 305.

The officers also described smelling alcohol on Mr. Schlenker. RP 169, 199, 243, 276. Due to the strong smell of alcohol, Mr. Schlenker was transported to the hospital rather than to the jail, to "clear" him for jail. RP 169, 276.

Off. Natsiopoulos testified that on the way to the hospital, Mr. Schlenker threatened to strangle him to death. RP 172. Off. Natsiopoulos also said that Mr. Schlenker threatened to kill his children by strangulation, despite not having children. RP 202. Mr. Schlenker also reportedly banged his head against the vehicle partition several times. RP 208-09. Although Off. Natsiopoulos could not tell how much Mr. Schlenker had drunk, he described Mr. Schlenker as more volatile and presenting a greater safety concern due to alcohol. RP 210. Off. Natsiopoulos also said he

believed Mr. Schlenker's intoxication played a part in making the threats.[1] RP 204.

The police officers also testified regarding their knowledge of Mr. Schlenker. Dep. Chief Meling said he did not have a good relationship with Mr. Schlenker, given that he had petitioned for an extreme risk protection order against him in September 2020, and Mr. Schlenker was involuntarily held in the hospital. RP 239; accord RP 199 (Dep. Chief Meling and Mr. Schlenker had prior bad history). The petition was allegedly based on mental health, alcohol, and threats to harm law enforcement, medical personnel, lawyers, and previous employers. RP 240, 244. Dep. Chief Meling testified that Mr. Schlenker's behavior on February

[1] Evidence regarding uncharged conduct—pertaining to damage at the Long Beach police station—was also admitted at trial. RP 172-74. However, this evidence came with a limiting instruction that it could only be considered to assess "how that impacted Officer Natsiopoulous' [sic] fears" related to the felony harassment charge, and could not be considered for any other purpose. CP 85. The trial court consistently sustained defense objections to other testimony about the police station damage and excluded video evidence showing damage. RP 188-89, 229, 233, 278.

14, 2021 was "[v]ery similar" to his behavior on the day he obtained the extreme risk protection order, again noting alcohol. RP 243. As a result of the protection order, Mr. Schlenker's firearms were removed from him. RP 245. "After that point, Mr. Schlenker became increasingly angry with our department." RP 246.

Off. Natsiopoulos testified Mr. Schlenker had called 911 40 times on February 1, 2021 and another 40 times on February 14, 2021. RP 195. Off. Natsiopoulos said Mr. Schlenker made threats against the 911 dispatchers, comments about knocking out the sheriff's teeth, and stated something about needing 10 to 20 officers to effectuate his arrest. RP 206-07. Three of the 911 calls from February 14, 2022 were played for the jury. RP 320-28. In one of them, Mr. Schlenker alludes to the extreme risk protection order: "They took my firearms and other things, and lying when I was in the hospital. They ransacked my trailer, which is behind these guys." RP 327-28.

Mr. Schlenker testified at trial. He described being violently grabbed from behind in September 2020 when he was detained in the hospital pursuant to the extreme risk protection order. He said that after the extreme risk protection order, he made various complaints to the police and sheriff's office; he said there was no response from them, which he said frustrated him. RP 361-63, 365-66.

Mr. Schlenker said he had drunk four beers and a bottle of wine on the evening of February 13, 2021. RP 366, 370. He said that his comments to the 911 operators were "poor judgment, I guess, probably, from . . . I don't want to blame it all on the alcohol, but most likely that had something to do with it." RP 368.

Mr. Schlenker acknowledged breaking windows in a couple of vehicles at Off. Estrada's house, but denied damaging the Performing Arts Center, Elks Lodge, or Anchor Realty. RP 370-71, 403. In damaging Off. Estrada's vehicles, he stated his goal was to get a lawyer and get back into court to address the

extreme risk protection order and law enforcement's lack of response to his complaints about the protection order. RP 390-91. He said that he had no reason to damage any other property, as his frustration was focused on local law enforcement. RP 371-72. Mr. Schlenker also stated that there was no fighting during the arrest and that he went peacefully. RP 375. As for his comments to Off. Natsiopoulos regarding strangling, Mr. Schlenker explained that he was trying to get attention to address the handcuffs on him that were too tight. RP 376-77; see RP 281 (Off. Wright acknowledging the handcuffs were on too tight).

2. Charges and amended charges

The prosecution initially charged Mr. Schlenker with malicious mischief in the first degree (Count I; pertaining to damage of police vehicle); malicious mischief in the second degree (Count II; pertaining to damage to Performing Arts Center); felony harassment (Count III; pertaining to threats made to Off. Natsiopoulos); malicious mischief in the third degree (Count IV; pertaining to damage to Off. Estrada's personal

vehicles); and resisting arrest (Count V): CP 4-6. The prosecution later amended only Count II, alleging Mr. Schlenker knowingly and maliciously caused "physical damage, in excess of $750, to property belonging to Long Beach Performing Arts Center, The Elks Lodge, and Anchor Realty[.]"[2] CP 33. The amended information did not allege that the damage to these properties was part of a common scheme or plan. CP 33.

3. The trial court refuses to give a voluntary intoxication instruction

In proposed jury instructions, the defense included a voluntary intoxication instruction, which read, "No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, in determining whether the defendant acted maliciously, evidence of intoxication may be considered." CP 60.

[2] Prior to trial, the prosecution sought to amend its information a second time to add a charge of burglary related to the police station, but the trial court denied this amendment, ruling that it was "far too late" to add additional counts. RP 55-56.

Defense argued that both Dep. Chief Meling and Off. Natsiopoulos agreed Mr. Schlenker's "intoxication is affecting his decision marking; my client admitting drinking at least four beers and then breaking into a wine bottle within hours of this all happening. So, I think there's sufficient evidence to support it." RP 433.

The state responded that "voluntary intoxication typically requires some form of the testimony that the intoxication actually impaired the Defendant. And typically it is some form of expert testimony." RP 433-34. Although rejecting the state's argument about expert testimony, the trial court refused to give a voluntary intoxication instruction, stating, "We have the Defendant's testimony that he was drinking; we have the officer's observation that they smelled some alcohol. So, there is some evidence of drinking. We don't have evidence of intoxication." RP 434. In addition, the trial court noted that because Mr. Schlenker testified about his intent, he could not show that drinking affected his ability to acquire the required mental state. RP 434-35.

4. Defense motions to dismiss based on insufficient evidence, jury questions, and verdicts

The defense twice moved to dismiss Count II. After the state rested, the defense argued, "their [the state's] proof . . . requires him to have done all three, the way it's worded, and, at most, the only proof they have provided is that he had done Long Beach Performing and Elks, not Anchor Realty, as is listed." RP 350. The trial court noted that the information "doesn't say 'or[,]' it says 'and,'" and asked the state to respond. RP 351. The prosecution contended, "if any one of those businesses meets [the $750] threshold and Mr. Schlenker is tied to one or more, Count II should stand." RP 351. The court ruled that because there was some evidence of damage to Anchor Realty, the state could proceed on Count II. RP 351. The defense renewed the motion to dismiss Count II after the state rested its rebuttal case, again contending that the only evidence regarding Anchor Realty was an officer indicating he took pictures, which was not "proof

of damage to all three[.]" RP 418. The court again denied the motion to dismiss Count II. RP 418.

In the to-convict instruction on Count II, the jury was required to find beyond a reasonable doubt that "on or about February 14, 2021, the defendant caused physical damage to the property of Long BEach [sic] Performing Art Center, The Elks Lodge, and Anchor Realty in an amount exceeding $750[.]" CP 77.

The jury submitted a question about Count II during deliberations: "With respect to Malicious Mischief in the second degree, does the law require all identified locations be damaged or only that some of the identified locations are damaged in excess of $750.00? CP 98. The trial court indicated it could not answer the question without commenting on the evidence. RP 524. With the agreement of the parties, the court responded, "Please re-read your instructions and continue deliberating[.]" CP 98; RP 524.

The jury returned guilty verdicts on all five counts. CP 99-100; RP 525-28.

5. Judgment, sentence, restitution, and appeal

The trial court imposed a first-time offender waiver pursuant to RCW 9.94A.650 on all five counts, totaling 90 days with credit for time served. CP 103; RP 546. For the first three counts, the only felonies, the trial court imposed nine months of community custody. CP 104; RP 546-47.

The trial court expressly stated, "Mr. Schlenker does not have the ability to pay on the discretionary legal obligations. I will impose just the $500 crime victim assessment[and] the $100 DNA fee[.]" RP 549; see also CP 106 (striking some discretionary LFOs). Nevertheless, the judgment and sentence orders Mr. Schlenker to "pay supervision fees as determined by DOC[.]" CP 105.

A restitution hearing occurred several months later. The state submitted restitution materials seeking reimbursement for damage to the police station, a crime that Mr. Schlenker was

never charged with. CP[3] 153. According to the materials, there was damage to the police department totaling $7,942.37 and damage to Off. Estrada's patrol vehicle totaling 3,791.51. CP 153-67 (letter and enclosed invoices). The Washington Cities Insurance Authority's letter indicated that the City of Long Beach had paid a $2,000 deductible and the insurance company had paid $9,733.88. CP 153.

Mr. Schlenker pointed out that the trial did not involve damage to the police station: "In the Restitution Order, the State is requesting monies for damage to Long Beach Police Department. That was never part of the trial. He was convicted of malicious mischief in the first degree in Count I, which had to do with an emergency police vehicle." RP 557. The trial court agreed with the defense and refused to impose restitution for

[3] Near contemporaneously with the filing of this brief, Mr. Schlenker also files a supplemental designation of clerk's papers to designate the restitution documentation and the restitution order. For these documents, he cites the clerk's papers based on the pages he anticipates will be assigned per the supplemental designation.

damage to the police station: "The damage to the building, to the police department, was not included as part of this trial. It wasn't charged; it wasn't proved; and therefore, there can be no restitution for that." RP 561.

In the restitution order, the trial court imposed $3,791.51 in restitution to Long Beach Police Department, based on the damage to the vehicle. CP 168. Despite determining that restitution could not be imposed for damage to the police station building, the restitution order nonetheless includes $9,733.88 to Washington Cities Insurance for the police station damage. CP 168.

The restitution documentation submitted by the prosecution also included an email from witness Bill Svendsen of the Performing Arts Center, indicating that plywood and replacement glass totaled $1,190.96. CP 151-52. In the restitution order, however, the trial court imposed this amount to the benefit of Anchor Realty, for which there were no losses ever

discussed or submitted at trial or in advance of the restitution hearing.

Mr. Schlenker timely appealed. CP 120-36.

C. ARGUMENT

1. **Mr. Schlenker was entitled to a voluntary intoxication instruction based on the evidence at trial, and the denial of the instruction for all five counts denied him a full and fair opportunity to defend against the prosecution's charges**

a. It was error to deny the voluntary intoxication instruction as to the malicious mischief counts

The Court of Appeals reviews "de novo whether a defendant has been denied his constitutional right to present a defense." State ex rel. Haskell v. Spokane County Dist. Ct., 198 Wn.2d 1, 12, 491 P.3d 119 (2021). "Within this decision we must determine whether the defendant proffered sufficient evidence to merit presentation of the . . . defense to the jury." Id. "In doing so, we interpret the evidence most strongly in favor of the defendant and must not weigh the evidence, which is an exclusive function of the jury." Id.

The Sixth Amendment to the United States Constitution and article I, sections 21 and 22 of the Washington Constitution "guarantee a defendant the right to trial by jury and to defend against criminal allegations." Id. (citing State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002)); accord Chambers v. Mississippi, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). "A defendant's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic in our system of jurisprudence." State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

"A defendant is entitled to a voluntary intoxication instruction when (1) the crime charged includes a mental state, (2) there is substantial evidence of drinking, and (3) there is evidence that the drinking affected the defendant's ability to form the requisite intent or mental state." State v. Kruger, 116 Wn. App. 685, 691, 67 P.3d 1147 (2003). Simply showing alcohol consumption does not warrant a voluntary intoxication

instruction. Id. at 692. Rather, "the evidence must show the effects of the alcohol." Id.

> "A person can be intoxicated and still be able to form the requisite mental state, or he can be so intoxicated as to be unconscious. Somewhere between these two extremes of intoxication is a point on the scale at which a rational trier of fact can conclude that the State has failed to meet its burden of proof with respect to the required mental state."

Id. (quoting State v. Gabryschak, 83 Wn. App. 249, 254, 921 P.2d 549 (1996)).

Expert testimony to support a voluntary intoxication instruction is not required. State v. Classen, 4 Wn. App. 2d 520, 537, 422 P.3d 489 (2018). "This is because '[t]he effects of alcohol are commonly known and jurors can draw reasonable inferences from testimony about alcohol use.'" Id. (alteration in original) (quoting State v. Thomas, 123 Wn. App. 771, 782, 98 P.3d 1258 (2004)).

The defense submitted the typical, court-approved voluntary intoxication instruction with respect to the malicious mischief charges included in Count I (first degree), Count II

(second degree), and Count IV (third degree): "No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, in determining whether the defendant acted maliciously, evidence of intoxication may be considered." CP 60; accord 11 WASH. PRACTICE: WASH. PATTERN JURY INSTRUCTIONS: CRIMINAL § 18.10 (5th ed. 2021). The trial court denied the instruction, failing to accurately view the evidence in the light most favorable to the defense. This was legal error and violated Mr. Schlenker's constitutional rights to defend against the state's charges.

There can be no dispute here that the first two entitlements to the instruction—that the crimes include a mental state and that there is substantial evidence of drinking—are amply satisfied. Malicious mischief requires the prosecution to prove the defendant acted knowingly and maliciously. RCW 9A.48.070(1) (first degree malicious mischief); CP 73 (to-convict jury instruction 5); RCW 9A.48.080(1) (second degree malicious mischief); CP 77 (to-convict jury instruction 9); RCW

9A.48.090(1)(a) (third degree malicious mischief); CP 87 (to-convict jury instruction 19). All degrees of malicious mischief include a mental state.

There was also clear evidence of alcohol consumption, as the trial court acknowledged. RP 434 (acknowledging evidence of drinking). Indeed, multiple officers testified that Mr. Schlenker smelled of alcohol and they took Mr. Schlenker to the hospital to be cleared for jail due to alcohol consumption. RP 169, 199, 243, 254, 276. Mr. Schlenker also testified he had drunk four beers and a bottle of wine that evening. RP 366, 370.

The trial court denied the voluntary intoxication instruction because, in its view, "[w]e don't have evidence of intoxication." RP 434. The trial court was mistaken. When viewed in the light most favorable to Mr. Schlenker, there was substantial evidence of intoxication.

Multiple officers testified that Mr. Schlenker had difficulty understanding them. When Dep. Chief Meling ordered him to get on the ground, Mr. Schlenker stated he could not understand

what she said; Off. Natsiopoulos similarly stated that Mr. Schlenker was confused about what Dep. Chief Meling was asking of him. RP 197, 227. Off. Estrada also reported that Mr. Schlenker's speech was belligerent and that she could not understand most of what he said because it did not make any sense. RP 271. This evidence, viewed in the light most favorable to Mr. Schlenker, indicates intoxication.

In addition, Off. Natsiopoulos, who transported Mr. Schlenker to the hospital for prejail clearance due to the strong smell of alcohol, testified regarding Mr. Schlenker's threats to strangle him and his nonexistent children. RP 202. Off. Natsiopoulos also said Mr. Schlenker repeatedly banged his head against the partition in the police vehicle. RP 208-09. Off. Natsiopoulos said that Mr. Schlenker appeared "volatile" and presented a "safety concern" because he was under the influence of alcohol. RP 210. And, perhaps most explicitly, Off. Natsiopoulos answered, "Yes" to the question, "Do you believe that *his intoxication* played a part in him threatening you?" RP

204 (emphasis added). Mr. Schlenker was intoxicated according to Off. Natsiopoulos.

Dep. Chief Meling also described the extreme risk protection order process against Mr. Schlenker in September 2020, which was based in part on Mr. Schlenker's alcohol intoxication. RP 240, 244. Dep. Chief Meling said that Mr. Schlenker was acting "[v]ery similar" on the evening he was arrested on the instant offenses to how he acted back in September 2020. RP 243. And Dep. Chief Meling again noted the smell of alcohol in making this observation. RP 243. This, too, supported a finding of intoxication.

Mr. Schlenker also suggested he was intoxicated. After noting how much he drank—four beers and a bottle of wine—he acknowledged that he various comments to 911 operators that evening was "poor judgment." RP 368. Although he did not "blame it all on the alcohol," he stated, "most likely that had something to do with it." RP 368.

There was ample testimony at trial that suggested Mr. Schlenker was intoxicated, contrary to what the trial court ruled. The trial court erred in determining that there was no evidence of intoxication and using this as a basis to deny the defense request for a voluntary intoxication instruction.

The trial court also denied in the instruction because Mr. Schlenker testified "with the reason he was doing that he was doing; that he knew what he was doing." RP 435. It reasoned, "given Mr. Schlenker's testimony, he, himself, sets out pretty clearly that he did have the ability to form the intent and he acted specifically on it." RP 435.

This was additional error for two primary reasons. First, it is not the role of the trial court to weigh the evidence when assessing whether to give an instruction. Haskell, 198 Wn.2d at 12. Weighing the evidence is "an exclusive function of the jury," which is why the trial court must "interpret the evidence most strongly in favor of the defendant" when deciding whether to give a defense instruction. Id. at 12, 17. By openly weighing the

affirmative evidence of intoxication against Mr. Schlenker's testimony, the trial court failed to comply with the law.

Second, even if the trial court was correct in suggesting that Mr. Schlenker's testimony might undermine the voluntary intoxication theory, defendants are entitled to raise and argue inconsistent defenses. State v. Fernandez Medina, 141 Wn.2d 448, 459-60, 6 P.3d 1150 (2000). Thus, it is of no moment Mr. Schlenker's testimony might undermine the voluntary intoxication defense. The only question before the trial court was whether the voluntary intoxication defense was supported by the evidence, viewing such evidence in the light most favorable to Mr. Schlenker. Because voluntary intoxication was supported, the trial court was required to give it, irrespective of other inferences that might be drawn from the evidence.

In sum, all the malicious mischief counts (I, II, & IV) contained a mens rea element. There was evidence that Mr. Schlenker had drunk alcohol and that the drinking caused impairment and intoxication. Because Mr. Schlenker was

entitled to have the question of voluntary intoxication presented to the jury to determine, the trial court erred in denying the instruction and, in turn, in denying Mr. Schlenker his basic constitutional rights to pursue a defense. The Court of Appeals must reverse all malicious mischief convictions and remand for a trial that honors Mr. Schlenker's right to his chosen defenses.

b. Defense counsel was ineffective for not also seeking a voluntary intoxication instruction for the felony harassment and resisting arrest counts

The Sixth Amendment and article I, section 22 guarantee the right to effective assistance of counsel. State v. Estes, 188 Wn.2d 450, 457, 395 P.3d 1045 (2017). "Washington has adopted Strickland v. Washington's two-pronged test for evaluating whether a defendant had constitutionally sufficient representation." Estes, 188 Wn.2d at 457 (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). The two prongs are deficient performance and prejudice. Estes, 188 Wn.2d at 457-58.

"Performance is deficient if it falls 'below an objective standard of reasonableness based on consideration of all the circumstances.'" Id. at 458 (quoting State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)). The duty to provide effective assistance includes the duty to research and be aware of relevant legal authorities. Estes, 188 Wn.2d at 460 (citing In re Pers. Restraint of Yung-Cheng Tsai, 183 Wn.2d 91, 102, 351 P.3d 188 (2015)). Failing to apprise oneself of the controlling law falls below an objective standard of reasonableness. Estes, 188 Wn.2d at 460; State v. Kyllo, 166 Wn.2d 856, 868, 215 P.3d 177 (2009).

Here, defense counsel performed deficiently by requesting a voluntary intoxication only with respect to the malicious counts rather than for all the counts. As discussed above, a voluntary intoxication instruction must be given if (1) the offense at issue involves a mental state, (2) there is evidence of drinking, and (3) there is evidence showing that drinking affected the ability to form the requisite mental state. Kruger, 116 Wn. App. at 691.

Had counsel requested the instruction for the felony harassment and resisting arrest counts, the trial court would have been obliged to give the instruction.

First, felony harassment and resisting arrest both have mental state elements. RCW 9A.46.020(1)(a) (felony harassment statute, which requires a person to "knowingly threaten[]"); CP 81 (to-convict instruction 13 for felony harassment, requiring mental element of knowledge); RCW 9A.76.040 (resisting arrest statute, which requires "intentionally prevents or attempts to prevent" lawful arrest); CP 89 (to-convict instruction 21 for resisting arrest, requiring mental element of intent).

Second, as already discussed, there was significant evidence that Mr. Schlenker was drinking. He testified he drank, and several officers testified they smelled alcohol and took him to the hospital rather than to the jail based on his alcohol consumption. RP 169, 199, 243, 276, 366, 370.

The only remaining issue is the third: whether the evidence showed Mr. Schlenker was intoxicated to the point at which a

reasonable trier of fact could conclude it affected his ability to form the requisite mental state. As discussed above, significant testimony showed that Mr. Schlenker was intoxicated. And there was a particularly strong showing of intoxication as it relates to both the felony harassment and the resisting arrest counts.

As for felony harassment, Off. Natsiopoulos explicitly stated he believed Mr. Schlenker's intoxication played a part in making threats. RP 204. Off. Natsiopoulos also more generally expressed a safety concern based on Mr. Schlenker's intoxication-related volatility. RP 210. Thus, Mr. Schlenker was entitled to a voluntary intoxication instruction for the felony harassment count had defense counsel requested one.

The same is true for resisting arrest. Several officers testified that during the arrest process, Mr. Schlenker appeared confused and indicated he could not understand the simple commands that were being asked of him. RP 197, 227. In addition, Mr. Schlenker had difficulty expressing himself, speaking belligerently and in a manner that did not make sense.

RP 271. This evidence likewise shows that, if defense counsel's requested voluntary intoxication instruction pertained to the resisting arrest count, there was substantial evidence to support giving it.

Defense counsel performed deficiently by limiting the voluntary intoxication instruction request to malicious mischief. The other two crimes at issue, felony harassment and resisting arrest, both had mental states. The trial evidence supported not only that Mr. Schlenker had been drinking but that the drinking affected his ability to form the requisite mental states as to harassment and resisting arrest. No objectively reasonable explanation exists on this record for requesting voluntary intoxication requests only for the malicious mischief counts. Counsel performed deficiently for not also including felony harassment and resisting arrest within his request for a voluntary intoxication instruction. The first Strickland prong is satisfied.

As for prejudice, prejudice exists "if there is a reasonable probability that 'but for counsel's deficient performance, the

outcome of the proceedings would have been different.'" Estes, 188 Wn.2d at 458 (quoting Kyllo, 166 Wn.2d at 862). A "reasonable probability" "is lower than a preponderance standard" and is a "probability sufficient to undermine confidence in the outcome." Estes, 188 Wn.2d at 458 (citing Strickland, 466 U.S. at 694).

As the Kruger court recognized in this context, counsel's deficient performance in not requesting an instruction is prejudicial because "'the jury, without the requested instruction, was not correctly apprised of the law, and defendants' attorneys were unable to effectively argue their theory of an intoxication defense.'" 116 Wn. App. at 694 (quoting State v. Rice, 102 Wn.2d 120, 123, 683 P.2d 199 (1984)). Indeed, here, even though the jury heard ample evidence about Mr. Schlenker's voluntary intoxication, including how it affected his behavior with respect to the threats he made to Off. Natsiopoulos and with respect to complying with officers' commands during arrest, without the instruction, the jury could not use this evidence to

make any consideration whatsoever. Had defense counsel requested an involuntary intoxication instruction, the trial court would have been obliged to give one for these crimes based on the evidence. In turn, based on the officers' testimony, the outcome of these proceedings could have differed within a reasonable probability.

By limiting the voluntary intoxication request only to the malicious mischief counts, rather than to all the counts for which the instruction was supported, counsel performed deficiently and this deficient performance prejudiced the outcome of Mr. Schlenker's trial. The Court of Appeals should reverse the convictions and remand for a trial at which the jury is correctly and adequately instructed on voluntary intoxication.

2. There was insufficient evidence of malicious mischief in the second degree as charged and instructed in Count II

The due process clause of the Fourteenth Amendment requires the State to prove every element of an offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 316, 99 S.

Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Whenever an allegation is included in the to-convict instruction, it becomes the law of the case and must be proved by the State beyond a reasonable doubt, just like any other element. State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998); State v. Nam, 136 Wn. App. 698, 706-07, 150 P.3d 617 (2007) (applying Hickman to to-convict instruction). On review, the court views the evidence in the light most favorable to the prosecution, asking whether a rational trier of fact could find all elements of the charged crime beyond a reasonable doubt. State v. Vasquez, 178 Wn.2d 1, 6, 309 P.3d 318 (2013).

Hickman controls the application of these principles here. Mr. Hickman was charged with insurance fraud for presenting a false insurance claim regarding the theft of his car. 135 Wn.2d at 100. Although there was no legal requirement that the prosecution prove the county in which the crime occurred, the to-convict instruction required proof that a false or fraudulent claim

"occurred in Snohomish County Washington." Id. at 101. Mr. Hickman challenged the sufficiency of this element on appeal, arguing the evidence showed he was in Hawaii when he filed his claim and the insurer was located in King County, not Snohomish. Based on the lack of evidence that the crime occurred in Snohomish County, the Washington Supreme Court reversed Mr. Hickman's conviction and dismissed the prosecution. Id. at 105.

The result here should be the same. Even when viewed in the light most favorable to the prosecution, there was not sufficient evidence that Mr. Schlenker caused physical damage to the Performing Arts Center, The Elks Lodge, *and* Anchor Realty in an amount exceeding $750. CP 77 (to-conviction instruction 9).

The jury certainly heard evidence of the damage to the Arts Center and The Elks Lodge. Witnesses from each organization testified about the damage to their properties, and

gave estimates of what it cost to repair them. RP 331, 338-39, 341, 345.

However, the jury heard no evidence whatsoever about Anchor Realty's repair costs. The only testimony that pertained to Anchor Realty during the entire trial was Dep. Chief Meling's statement that he contacted Anchor Realty to inform them of a broken window. RP 237-38. There was simply no evidence presented by the prosecution as to a monetary amount associated with this alleged damage.

Under the law of this case, the prosecution was required to prove that the defendant "caused physical damage to the property of Long BEach [sic] Performing Art Center, The Elks Lodge, and Anchor Realty in an amount exceeding $750." CP 77. Because it was impossible for the jury to make this determination without some evidence of the amount of damage Anchor Realty sustained, there was insufficient evidence to prove second degree malicious mischief in Count II.

Jurors are presumed to interpret instructions in a normal, commonsense manner rather than in a strained or hypertechnical one. State v. Moultrie, 143 Wn. App. 387, 394, 177 P.3d 776 (2008). The three properties at issue, the Performing Arts Center, The Elks Lodge, and Anchor Realty were separated in the instructions with the conjunctive "and." CP 77. Read in a normal manner, jury instruction 9 required the jury to determine that the physical damage to all three properties resulted in amount exceeding $750, and the jury heard evidence about only two of the properties, not Anchor Realty. Because there was no evidence about Anchor Realty's physical damage amounts, a rational trier of fact could not conclude that all three properties sustained damage exceeding $750, even when the evidence is viewed in the light most favorable to the state.

In fact, the jury posed a question that supports Mr. Schlenker's argument. The jury asked, "does the law require all identified locations be damaged or only that some of the identified locations are damaged in excess of $750.00." CP 98.

This shows that the jury could identify no evidence presented to indicate that all three locations were damaged in excess of $750. Of course, they could not identify such evidence because the prosecution never presented any.

Read in a straightforward manner, the instruction at issue required proof of damages to the Performing Arts Center, The Elks Lodge, *and* Anchor Realty. There was no proof of damages to Anchor Realty. Because there was no such proof, there was insufficient evidence under instruction 9, the law of this case. Hickman, 135 Wn.2d at 101-02. Accordingly, malicious mischief in the second degree as charged in Count II must be reversed and dismissed with prejudice. Id. at 103.

3. **Alternatively, Count II must be reversed and dismissed without prejudice because the prosecution failed to plead a common scheme or plan in the information, an essential element of malicious mischief in the second degree when the charge is based on aggregation**

Even if the Court of Appeals concludes that there was sufficient evidence to sustain Count II, reversal and dismissal

without prejudice is still required because the state failed to include an essential element of the crime in the information.

The Sixth Amendment and article I, section 22 guarantee the accused the right to be informed of the nature and cause against him in the information. State v. McCarty, 140 Wn.2d 420, 424-25, 998 P.2d 297 (2000); State v. Rivas, 168 Wn. App. 882, 887, 278 P.3d 686 (2012). "It is a well-settled rule that a charging document satisfies these constitutional principles only if it states all the essential elements of the crime charged, both statutory and nonstatutory." McCarty, 140 Wn.2d at 525 (citing State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991)). The Court of Appeals reviews challenges to the sufficiency of the information de novo. Rivas, 168 Wn. App. at 887.

"Where a defendant challenges the sufficiency of an information for the first time on appeal, we construe that charging document liberally in favor of validity." Id. This required liberal construction employs a two-prong test: "(1) do the necessary elements appear in any form, or by fair construction can they be

found in the information and, if so, (2) can the defendant show he or she was actually prejudiced by the vague or inartful language." Id. "Under the first prong, we consider the charging document alone, reading it as a whole, construing it 'according to common sense,' and including facts that are necessarily implied by the document's language.'" Id. at 887-88 (quoting State v. Goodman, 150 Wn.2d 774, 788, 83 P.3d 410 (2004) (quoting Kjorsvik, 117 Wn.2d at 109)). "In order to satisfy the first prong, the charging document must include some language notifying the defendant of any missing essential element." Rivas, 168 Wn. App. at 888 (citing State v. Courneya, 132 Wn. App. 347, 351, 131 P.3d 343 (2006)).

Under this first prong of analysis, if the reviewing court "can neither find nor fairly imply an essential element of the crime in the charging document, we presume prejudice and reverse without considering whether the omission prejudiced the defendant." Rivas, 168 Wn. App. at 888. Because the information at issue here, nearly identical to the information at

issue in Rivas, fails to include or fairly imply an essential element of second degree malicious mischief, reversal is required without a showing of prejudice.

"A person is guilty of malicious mischief in the second degree of he or she knowingly and maliciously . . . [c]auses physical damage to the property of another in an amount exceeding [$750]." RCW 9A.48.080(1)(a). "If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count." RCW 9A.48.100(2). "If the sum of the value of all the physical damages exceeds [$250], the defendant may be charged with and convicted of malicious mischief in the second degree." Id.

As the Rivas court correctly interpreted these statutes, "the plain statutory language compels the conclusion that a common scheme or plan is an essential element of second degree

malicious mischief where the State aggregates the value of damages to more than one *item* of property to reach the $750 threshold." 168 Wn. App. at 889.

In Rivas, the state attempted to aggregate the value of two damaged cars, a Honda and a Ford, to reach an aggregated value of $750. Id. at 890. "Because the State charged Rivas with second degree malicious mischief based on the aggregate value of the damage to two *items* of property, the Honda and the Ford, the State was required to allege Rivas damaged those two items of property pursuant to a common scheme or plan." Id. (citing RCW 9A.48.100(2)). "Accordingly, a common scheme or plan is an essential element of second degree malicious mischief when the State aggregates the value of damaged items of property in order to reach the statutory damage threshold." Rivas, 168 Wn. App. at 890 (emphasis added) (citing RCW 9A.48.100(2)).

In Rivas, the state failed to allege the damage to the Ford and Honda as part of a common scheme or plan in the information. Rivas, 168 Wn. App. at 890. Even liberally

construing the information in favor of validity, the court concluded that the information was deficient. Id. "The information omits the essential element of a common scheme or plan for second degree malicious mischief based on the aggregated value of damages to multiple items of property as charged." Id. Therefore, the Rivas court reversed the second degree malicious mischief conviction without considering the question of prejudice, ordering dismissal without prejudice. Id. at 890-91.

The Rivas decision controls and same reversal and dismissal without prejudice is required here. In the amended information, Count II reads, "The defendant, SHAUN AARON SCHLENKER, on or about February 14, 2021 , [sic] in the State of Washington, did knowingly and maliciously cause physical damage, in excess of $750, to property belong to Long Beach Performing Arts Center, The Elks Lodge, and Anchor Realty; in violation of RCW 9A.48.080(1)(a)." CP 33.

As in Rivas, the state relied on aggregation of damage to more than one item of property—damages sustained by the Performing Arts Center, The Elks Lodge, and Anchor Realty. Cf. Rivas, 168 Wn. App. at 490. As in Rivas, the information does not include the essential element of a common scheme or plan when second degree malicious mischief is based on the aggregated value of damages to multiple items of property. Cf. id. This element is not stated in the information, nor is it fairly implied therein. Cf. id. As in Rivas, reversal of the conviction for second degree malicious mischief is required without regard to prejudice and the count must be dismissed without prejudice. Cf. id. at 690-91. Mr. Schlenker asks that the Court of Appeals reverse his conviction for second degree malicious mischief and dismiss Count II without prejudice. See id.

4. **The trial court expressly refused to impose any restitution for damage to the police station, yet the restitution order imposes restitution for this damage; this amount must be stricken from the restitution order**

"Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property . . . ." RCW 9.94A.750(5). "[R]estitution is authorized only by statute, and a trial court exceeds its statutory authority in ordering restitution where the loss suffered is not causally related to the offense committed by the defendant, or where the statutory provisions are not followed." State v. Vinyard, 50 Wn. App. 888, 891, 751 P.2d 339 (1988). "The general rule is that restitution may be ordered only for losses incurred as a result of the precise offense charged. Restitution cannot be imposed based on the defendant's 'general scheme' or acts 'connected with' the crime charged, when those acts are not part of the charge." State v. Miszak, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993) (citation omitted).

In this case, Mr. Schlenker was charged and convicted of malicious mischief to property to police vehicles owned by the police department, but he was not convicted of any crime related to damaging the police station. See CP 32-33 (amended information, Count I). In fact, when the prosecution attempted to elicit information about the police station damage, the trial court repeatedly sustained defense objections and excluded video evidence of such damage. RP 188-89, 229, 233, 278. Damage to the police station served only one valid purpose at trial: to assess the reasonableness of Off. Natsiopoulos's fears related to the felony harassment charge. Mr. Schlenker was not charged with or convicted of any crime related to the police station damage.

The trial court recognized precisely this at the restitution hearing. The state's restitution submission sought reimbursement for damage to the police station in the amount of $7,942.37, and it also sought restitution for $3,791.51 for damage to the police vehicle, which was charged/convicted conduct. CP 153-67. The insurance adjuster's letter makes this clear, indicating that the

City of Long Beach had paid a $2,000 deductible and the insurer paid $9,733.88. This total, $11,733.88, is the sum of the police vehicle damage of $3,791.51 and the police station damage of $7,942.37. As the trial court recognized after hearing from the defense and reviewing the documents, "The damage to the building, to the police department, was not included as part of this trial. It wasn't charged; it wasn't proved; and therefore, there can be no restitution for that." RP 561.

However, the restitution order signed by the trial court fails to reflect this. It includes the $3,791.51 amount for the police vehicle. CP 168. But it also includes an additional $9,733.88. CP 168. This additional $9,733.88—which was the total of the damage to the station and the vehicle paid out by the insurer—was imposed in error. Certainly, the restitution order may include $3,791.51 for the police vehicle. Any police-department-related amount beyond this, however, exceeds the trial court's authority because it is not related to any crime Mr. Schlenker was charged and convicted of. Miszak, 609 Wn. App. at 426. As

argued above, restitution should be reversed along with all Mr. Schlenker's convictions. But, in the event it remains after the appeal, because the $9,733.88 imposed exceeded the trial court's authority, as the trial court itself recognized, the $9,733.88 must be stricken from the restitution order.

5. **The Long Beach Performing Arts Center submitted materials in support of its restitution request, but the trial court imposed this requested restitution not to the Arts Center but to Anchor Realty; the restitution order must be corrected to reflect the restitution owed in this case**

The restitution order contains another error that should be corrected: it names Anchor Realty as a beneficiary of restitution in the amount of $1,190.96. CP 168. As discussed in Part C.2 above, no evidence of any damage amount was presented regarding Anchor Realty at trial. Nor does the state's restitution documentation provide for any loss suffered by Anchor Realty. Rather, the $1,190.96 amount was submitted by Bill Svendsen of the Performing Arts Center, detailing the cost of plywood and replacement glass. CP 151-52. Thus, this amount in restitution is

not intended for Anchor Realty but for the Performing Art Center.

This error may be treated as a scrivener's error. A "scrivener's error" is synonymous with a "clerical mistake." In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701-02, 117 P.3d 353 (2003). "A clerical mistake is one that when amended would correctly convey the intention of the court based on other evidence." State v. Priest, 100 Wn. App. 451, 455, 997 P.2d 452 (2002) (citing Presidential Estates Apartment Ass'n v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)). The remedy for such an error is remand for correction of the error. Mayer, 128 Wn. App. at 701-02. Accordingly, assuming that any restitution survives his challenges on appeal, Mr. Schlenker requests remand so that the restitution order may be amended to accurately reflect the documentation submitted by the prosecution and relied on by the trial court.

6. Department of Corrections community custody supervision fees must be stricken from the judgment and sentence

The trial court imposed only mandatory financial obligations on Mr. Schlenker based on indigency. CP 103, 106. The court stated at sentencing that Mr. Schlenker "does not have the ability to pay on the discretionary legal obligations. I will impose just the $500 crime victim assessment, the $100 DNA fee . . . ." RP 549. Nonetheless, the judgment and sentence requires Mr. Schlenker to "pay supervision fees as determined by" the Department of Corrections as a condition of community custody. CP 105.

The community custody supervision fees are discretionary legal financial obligations. State v. Bowman, 198 Wn.2d 609. 629, 498 P.3d 478 (2021). Because they are discretionary, they may be stricken if it appears they would not have been imposed had the court exercised its discretion. Id. Because the trial court imposed only mandatory financial obligations and stated it would not impose discretionary financial obligations based on

indigency, the discretionary community custody supervision fees should be stricken from the judgment and sentence. See id.

D. CONCLUSION

The absence of a voluntary intoxication instruction as to all counts, whether the fault of the trial court or defense counsel, denied Mr. Schlenker a full and fair opportunity to a defense against the state's charges and thereby denied Mr. Schlenker a fair trial. The second degree malicious mischief charged in Count II must be dismissed for insufficient evidence or, alternatively, dismissed without prejudice as a result of the state's failure to include an essential element in the information. The $9,733.88 imposed in the restitution order must be stricken because it relates to damages for which Mr. Schlenker was never convicted; the $1,190.96 imposed in favor of Anchor Realty must be corrected because no evidence of Anchor Realty was ever presented at trial or in advance of the restitution hearing. Finally, the community custody supervision fees imposed in the judgment and sentence must be stricken.

DATED this 29th day of July, 2022.

I certify this document contains 8,990 words. RAP 18.17.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

KEVIN A. MARCH
WSBA No. 45397
Office ID No. 91051
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC

July 29, 2022 - 11:09 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56443-2
Appellate Court Case Title:	State of Washington, Respondent v. Shaun Aaron Schlenker, Appellant
Superior Court Case Number:	21-1-00028-7

The following documents have been uploaded:

- 564432_Briefs_20220729110611D2506543_3565.pdf
  This File Contains:
  Briefs - Appellants
  The Original File Name was BOA 56443-2-II.pdf
- 564432_Designation_of_Clerks_Papers_20220729110611D2506543_8628.pdf
  This File Contains:
  Designation of Clerks Papers - Modifier: Supplemental
  The Original File Name was SDCP 56443-2-II.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- bwalker@co.pacific.wa.us
- mrothman@co.pacific.wa.us

Comments:

Copy of brief of appellant mailed to: Shaun Schlenker 4707 SW 60th Ln Olympia, WA 98512

Sender Name: Kevin March - Email: marchk@nwattorney.net
Address:
2200 6TH AVE STE 1250
SEATTLE, WA, 98121-1820
Phone: 206-623-2373

Note: The Filing Id is 20220729110611D2506543